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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,487	10/19/2001	Yasuo Konishi	388-011772	3710
7590	02/24/2004		EXAMINER	
Russell D. Orkin 700 Koppers Builing 436 Seventh Avenue Pittsburgh, PA 15219-1818			SHERRER, CURTIS EDWARD	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 02/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/035,487	KONISHI ET AL.	
	Examiner	Art Unit	
	Curtis E. Sherrer, Esq.	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12/08/03.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claim 7 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected apparatus, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement.

Applicant's election with traverse of the restriction is acknowledged. The traversal is on the ground(s) that the amended apparatus claim is intended to be used for the claimed process. This is not found persuasive because the recitation of an intended use is given no weight.

The requirement is still deemed proper and is therefore made FINAL.

This application contains claim 7, drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6 are indefinite because they do not employ one of the accepted preamble phrases; i.e., "comprising," "consisting of," or "consisting essentially of."

Claims 1-6 are indefinite because the process steps are not recited in an active tense, e.g., “subjecting” rather than “subjected.”

Claims 1 and 4 are indefinite because the scope of the phrase “storable at room temperature” is unknown. Specifically, it is not clear how long or at what conditions the starch grain material is stored.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimotori *et al.* (Jap. Pat. No. 09294579)(“Shimotori”).

Shimotori teaches the treatment of raw materials, such as rice, with simultaneous roasting and microwaving. See Abstract and machine translation. The treated material is then fermented to produce an alcoholic sake. The patent recites roasting (torrefaction in translation) and this process step reads on a step of “application of hot air current.”

On page 2, last full paragraph, it is stated that it is not necessary to make it absorb water before using it in the sake process. From the examples, it appears that moisture can be increased prior to the microwave/roasting process or after when fermentation begins. While the patent does not specifically state that the starch grain material is in a dry condition storable at room temperature, at the bottom of page 3, it is stated that they use oryzae semen with a water content

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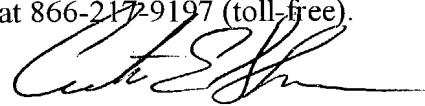
of 14% and this would inherently be considered be in a dry condition storables at room temperature.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.
Primary Examiner
Art Unit 1761